

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Closed Captioning Requirements for)	ET Docket No. 99-254
Digital Television Receivers)	

COMMENTS OF HOME BOX OFFICE

Home Box Office ("HBO"), a Division of Time Warner Entertainment Company, L.P. ("TWE"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking ("*Notice*"), released in the above-captioned proceeding on July 15, 1999.^{1/} The Commission's *Notice* seeks comments on proposed "technical standards for the display of closed captioning on digital television (DTV) receivers" and rules to "require the inclusion of closed captions decoder circuitry in DTV receivers."^{2/} The *Notice* is issued pursuant to Sections 303(u) and 330(b) of the Communications Act of 1934, as amended.^{3/}

I. STATEMENT OF INTEREST AND SUMMARY

HBO is a leading supplier of pay television programming in the United States. HBO distributes multiple feeds ("multiplex") of two premium programming services, HBO and Cinemax. The HBO and Cinemax services currently are distributed to nearly 35 million subscribers. The two HBO services are redistributed by means of a wide range of distribution

^{1/} FCC 99-180.

^{2/} *Notice* at ¶ 1.

^{3/} 47 U.S.C. §§ 303(u), 330(b).

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technologies, including cable television systems, SMATV systems, wireless cable systems, telephone company facilities, C-band satellites ("TVRO"), medium power Ku-band satellites and high power direct broadcast satellites ("DBS").

Prior to 1992, HBO distributed all of its services in an analog format. Beginning in 1992, and prior to finalization of any standards for digital television, HBO began distributing some program feeds to its affiliates in a digital format. The affiliates converted these digital signals to analog prior to transmitting the feeds to their subscribers who have analog set-top boxes. Since 1996, DBS operators and some cable affiliates have transmitted HBO programming in a digital format to their subscribers' set-top boxes, which convert the digital signals for display on analog television sets.

In March of this year, HBO began transmitting a feed of the HBO service that was digitally formatted in one of the ATSC formats adopted by the Commission. This feed is intended for display directly on high definition television ("HDTV") receivers. A significant amount of the programming on this feed is presented in digital HDTV in the 1080 line, interlaced scanning format (1080i). The remainder is upconverted to the 1080i format from standard definition to improve picture quality.

With respect to closed captioning, HBO has been a leader in the television industry in captioning its programming distributed over the existing analog NTSC television system. Long before the Commission adopted rules requiring certain amounts of closed captioning, and in response to marketplace opportunities, HBO had begun voluntarily to caption significant amounts of its program schedules.^{4/} HBO expects that these captioning efforts will be extended

^{4/} For a discussion of HBO's captioning initiatives, see Comments of HBO filed in MM Docket No. 95-175 (submitted Feb. 28, 1997).

to digital television once digital captioning standards are adopted and equipment becomes available to create captions in the digital standard.

The main thrust of this current proceeding is directed toward a requirement that television set manufacturers incorporate digital closed captioning decoder circuitry in television sets manufactured after a certain date, an issue on which HBO takes no position. Nevertheless, any decision the Commission may make on the receiver circuitry issue may have ramifications on the obligations of broadcasters, cable operators and other program distributors (and ultimately their programming networks), to provide captioning in their digital programming services. For this reason, HBO urges the Commission to consider the effect that its digital decoder circuitry rules will have on programming networks and distributors, and specifically, 1) to reaffirm its 1997 decision to impose no rules or requirements on the qualitative aspects of captioning and 2) to adopt a transition schedule for captioning of digital programming that is separate and distinct from the schedule that currently exists for captioning analog programming.

II. THE COMMISSION SHOULD REAFFIRM ITS DECISION NOT TO IMPOSE QUALITATIVE CAPTIONING REQUIREMENTS

The *Notice* proposes to incorporate Section 9 of the Electronic Industries Alliance (“EIA”) standard 708 into the Commission’s rules as the standard for the captioning capabilities of digital television receivers.^{5/} EIA-708 contains a larger set of captioning options than is present in the current analog captioning standard, EIA-608. For example, as the Commission

^{5/} At the time the *Notice* was issued, the EIA had designated the standard as 708-A. Subsequently, the EIA-708-A standard was revised. The new standard, EIA-708-B, presumably will be the one incorporated into the rules. For ease of reference in these Comments, HBO will simply use the designation “708.”

noted, EIA-708 provides greater choices among captioning characters, fonts, colors, spacing and screen positioning than are available under the EIA-608 standard.^{6/}

Although the enhanced capabilities of EIA-708 will allow programmers greater flexibility in presenting captioning information, the Commission specifically reiterated that it did not envision imposing obligations on caption providers to employ any of these capabilities: “We note that broadcasters [and other television distributors] are not obligated to provide the extensive features of EIA-708-A.”^{7/} HBO concurs in this conclusion.

When the Commission promulgated rules requiring the captioning of analog television programming, it considered and declined to adopt any standards to govern the non-technical “quality” of captioning. The Commission concluded first that programmers would have natural incentives to provide captioning of high quality:

As with other aspects of programming (e.g., the audio and video), programming providers have a strong incentive to maintain the overall quality of the programs they deliver to consumers, including captions of comparable quality.^{8/}

Moreover, the Commission concluded that “it would be difficult to establish standards in this area.”^{9/}

^{6/} Notice at ¶ 6.

^{7/} Notice at note 13.

^{8/} In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order (“1997 Order”), 13 FCC Rcd 3272, 3374 (rel. Aug. 22, 1997).

^{9/} Id.

The necessity for the Commission to refrain from imposing captioning quality requirements will be even more pronounced in the digital environment where the EIA-708 standard affords captioning providers a wide range of choices to customize their captioning presentations. For example, in addition to the black and white color scheme primarily used in EIA-608 captioning, EIA-708 will provide a minimum of eight colors and as many as 22. Similarly, in addition to EIA-608's single, mono-spaced, font, EIA-708 will provide eight fonts, some with proportional spacing. And, in addition to the placement of captions (typically the lower one-third of the screen), available from EIA-608, EIA-708 will permit many placement options, including 16:9 to 4:3 scaling, windows and automatic justification.

The choice of background and character colors, character size, placement, fonts and other variables will present opportunities for a myriad of captioning possibilities. Rather than specify a particular color scheme, font, character size and placement position that will constitute the minimum baseline of appropriate "quality," the Commission should leave to the creative instincts of each caption provider and to its market incentives to offer a high quality programming service, the decision of how to most efficiently and effectively present captioned information.

Accordingly, the Commission should reaffirm its commitment to forego any qualitative judgments as to how captioning should be done.

III. THE COMMISSION SHOULD ADOPT A SEPARATE TRANSITION SCHEDULE FOR THE CAPTIONING OF DIGITAL PROGRAMMING

The *Notice* proposes to make the DTV captioning rules effective one year after the date of adoption. Digital television receivers manufactured after the effective date would be required to contain captioning decoder circuitry meeting the EIA-708 standard. The Commission also

expressed its belief “that a one year transition period will provide sufficient time for programmers to incorporate closed captioning consistent with these standards into the digital programming they distribute.”^{10/} HBO understands from various sources that lead time of at least twenty-four (24) months, and perhaps longer, will be necessary to incorporate EIA-708 technology into television receivers. But irrespective of the time needed for incorporating EIA-708 into television receivers, HBO strongly disagrees with the Commission’s assessment that programmers can be expected to be captioning digital programming in substantial amounts within one year after the technical standards are adopted.

Just as it will take time to manufacture receivers with EIA-708 technology, so, too, will production equipment manufacturers need at least a similar amount of time to design, test and produce equipment capable of creating captioning consistent with the EIA-708 standard. Until that production equipment is available, programmers will be unable to even start captioning programming using EIA-708. Once the captioning process begins, it will take some time for programmers and other captioning providers to “ramp up” to high levels of digital captioning.^{11/}

By the time the rules at issue here are in effect, analog program distributors will be subject to rules requiring them to caption, at a minimum, 450 hours of “new” non-exempt programming per quarter per channel or 100 percent of new non-exempt programming offered on a channel if the channel distributor provides fewer than 450 hours of new non-exempt

^{10/} Notice at ¶ 14.

^{11/} This situation is markedly different from the one surrounding analog captioning. With analog, the production equipment had been in existence for years before rules were adopted and companies such as HBO had been voluntarily captioning significant amounts of programming.

programming per quarter.^{12/} To require digital programmers to begin captioning at these same levels on the effective date of the digital captioning rules, as explained below, simply would be impossible.

To provide programmers with sufficient time to get digital captioning underway, HBO submits that the Commission should establish a transition schedule for digital captioning similar to, but separate from, the analog schedule. Thus, “new” programming for digital purposes would be defined as programming prepared or formatted for reception on digital receivers on or after the effective date of the new digital rules. As was the case with analog captioning, beginning with the effective date of the digital rules, when digital production equipment with EIA-708 capability presumably will be available, there should follow a ramp-up period during which no specific captioning benchmarks are required. After the ramp-up period, and at two year intervals, there should be progressively higher benchmarks for captioning digital programming at the same levels as the current analog schedule (i.e., 450 hours per quarter for the first two year period after the ramp-up, 900 hours per quarter for the second two year period, etc.). The time line below reflects how such a transition schedule could operate:

Month						
0	24	48	72	96	120	144
FCC Adopts Rules	Effective Date of Rules	First New Program Captioning Benchmark (450 hours)	Second New Program Captioning Benchmark (900 hours)	Third New Program Captioning Benchmark (1350 hours)	Final New Program Captioning Benchmark (100%)	Pre Rule Benchmark (75%)

^{12/} 47 C.F.R. § 79.1(b).

Adoption of a separate transition schedule for digital captioning is necessary for several reasons. First, it simply will be impossible to provide significant amounts of EIA-708 captioning on the effective date of the rules because the necessary production equipment will only then be available. Second, the entire television industry already is engaged in a massive effort to develop facilities and train captioners to meet the requirements of the analog captioning rules. To impose significant new burdens on the industry to caption digital programming to the same levels would strain resources to the breaking point.

The net effect of the foregoing would be to discourage the program networks and distributors from creating digital programming, a result contrary to the Commission's desire for a rapid transition to digital television technology. In the Fifth Report and Order on digital television, the Commission established an aggressive schedule for broadcasters to construct digital television facilities. The rapid construction period was deemed necessary to prevent the failure of digital broadcasting, to promote digital television's strength internationally, to offset broadcaster disincentives to begin digital operations and to ensure the rapid recovery of the duplicative broadcast spectrum.^{13/} Recently, more attention has been focused on the absence of digital programming as a major deterrent to achieving a hasty transition. As Commissioner Ness recently observed:

Conversion from analog to digital is one of the most complex but critical undertakings this [broadcasting] industry has experienced.

* * *

^{13/} In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (rel. April 21, 1997).

[One] area of concern is the slow start to digital program development. The construction deadlines for broadcast stations will not mean much more without more programming than has been announced so far. The dearth of programming is the real problem.^{14/}

At the time when the development of digital programming is deemed critical to the success of the analog to digital television transition, and when, so far, such programming has been slow to develop, it would be counterproductive to impose additional disincentives on the programming industry, such as unrealistic early attainment of high levels of mandatory digital captioning. Instead, the Commission should recognize the realities of digital captioning and provide appropriate transition periods before mandatory captioning levels become effective.

^{14/} Opening Remarks of FCC Commissioner Susan Ness before the National Association of Broadcasters Convention, "Operation Digital" Panel, April 18, 1999
<<http://www.fcc.gov/speeches/Ness/spsn907.html>>.

IV. CONCLUSION

For the foregoing reasons, HBO urges the Commission to reaffirm its commitment to abstain from adopting captioning quality requirements and to provide adequate transition schedules necessary for the captioning of digital programming.

Respectfully submitted

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